

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ULYSSES PERSILVER,

Plaintiff,

v.

MERCHANTS CREDIT  
CORPORATION,

Defendant.

CASE NO. 2:19-cv-01922-RAJ

**ORDER**

**I. INTRODUCTION**

This matter is before the Court on Plaintiff's Objections (Dkt. # 12) to the Honorable Brian A. Tsuchida's Report and Recommendation ("R&R") (Dkt. # 11). The R&R recommends that the Court dismiss Plaintiff's complaint with prejudice for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The Court has considered Plaintiff's objections, the parties' briefing, and relevant record. For the reasons stated below, the Court **DECLINES** to adopt the Report and Recommendation and **DENIES** the motion to dismiss.

**II. BACKGROUND**

Plaintiff Ulysses Persilver ("Plaintiff" or "Mr. Persilver"), a "consumer" as defined by the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692(a)(3), filed this action alleging that Defendant Merchants Credit Corporation ("Defendant"), a "debt collector" as defined by § 1692(a)(6), violated the FDCPA in attempting to collect

1 a debt from Plaintiff. Dkt. # 1 at 2. Specifically, Plaintiff alleges that Defendant “falsely  
2 represent[ed] the amount, character, or legal status of any debt, including filing a lawsuit  
3 against Plaintiff for separate debts incurred by his wife before marriage” in violation of  
4 15 U.S.C. § 1692e(2)(A). *Id.* Defendant filed a Rule 12(b)(6) Motion to Dismiss the  
5 Complaint for failure to state a claim, alleging that Plaintiff’s claim is “baseless” because  
6 Defendant “has never filed suit against [Plaintiff] Persilver.” Dkt. # 4 at 2.

7 Although the facts of the debt due are not disputed, the facts related to the  
8 individual responsible are critical to the analysis and are therefore reviewed here. The  
9 debt at issue was incurred by Teresa Jean Smith (“the debtor”) for medical bills from  
10 Virginia Mason Clinic in the amount of \$2,420.95 and Virginia Mason Hospital in the  
11 amount of \$1,021.59. Dkt. # 4 at 2. Teresa Jean Smith was not married to Plaintiff  
Ulysses Persilver at the time these debts were incurred. *Id.* at 3.

12 After Teresa Jean Smith failed to pay the amounts owed, Defendant was assigned  
13 to collect these claims. *Id.* at 2. On December 10, 2018, Defendant commenced a  
14 lawsuit in King County District Court after efforts to collect the claims were  
15 unsuccessful. *Id.* The lawsuit was filed against “Teresa Jean Smith and John Doe Smith,  
16 and the marital community composed thereof.” Dkt. # 4-2 at 1. In its complaint,  
17 Defendant stated that “[d]uring all material times defendants [Teresa Jean Smith and John  
18 Doe Smith] were and are married and the obligation hereafter pleaded is the community  
19 and separate obligation of each.” *Id.* at 3. On January 5, 2019 Defendant served Teresa  
20 Jean Smith and John Doe Smith with two copies of the complaint at their home. Dkt. #  
4-3 at 1.

21 On April 2, 2019, Defendant filed a motion for summary judgment in King  
22 County District Court, seeking recovery of money due by Defendants Teresa Jean Smith  
23 and John Doe Smith. Dkt. # 4-5 at 3. Although Teresa Jean Smith did not respond to the  
motion, she appeared at the hearing and informed the court that she was not married at  
the time she incurred the debts. Dkt. # 4 at 3. On June 26, 2019, the court granted

1 judgment for Defendant and dismissed Plaintiff with prejudice “based on proof of  
2 marriage provided.” Dkt. # 4-6 at 2.

### 3 III. DISCUSSION

4 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a  
5 claim. The rule requires a court to assume the truth of the complaint’s factual allegations  
6 and credit all reasonable inferences arising from those allegations. *Sanders v. Brown*,  
7 504 F.3d 903, 910 (9th Cir. 2007). A court “need not accept as true conclusory  
8 allegations that are contradicted by documents referred to in the complaint.” *Manzarek v.*  
9 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A plaintiff must  
10 point to factual allegations that “state a claim to relief that is plausible on its face.” *Bell*  
11 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint  
12 avoids dismissal if there is “any set of facts consistent with the allegations in the  
13 complaint” that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.  
14 662, 679 (2009).

15 In a motion to dismiss, courts consider “the complaint in its entirety, as well as  
16 other  
17 sources courts ordinarily examine ..., in particular, documents incorporated into the  
18 complaint by  
19 reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor*  
20 *Issues &*  
21 *Rights, Ltd.*, 551 U.S. 308, 127 S.Ct. 2499, 2509, 168 L.Ed.2d 179 (2007). Courts may  
22 take  
23 judicial notice of adjudicative facts that are “capable of accurate and ready determination  
by  
resort to sources whose accuracy cannot reasonably be questioned,” Fed. R. Evid. 201(b),  
including “proceedings in other courts, both within and without the federal judicial  
system, if

1 those proceedings have a direct relation to the matters at issue.” *Bennett v. Medtronic,*  
2 *Inc.*, 285  
3 F.3d 801, 803 n. 2 (9th Cir.2002) (quoting *United States ex rel. Robinson Rancheria*  
4 *Citizens*  
5 *Council v. Borneo*, 971 F.2d 244, 248 (9th Cir.1992)). Defendant asks the Court to take  
6 judicial notice of prior proceedings in King County District Court. *See* Dkt. 4-1.  
7 Plaintiff admits the facts as stated by Defendant in its Motion to Dismiss and admits  
8 authenticity of the documents attached thereto. Dkt. 8 at 1. Because the state court  
9 proceedings have a clear and direct relation to the matters at issue, the Court takes  
10 judicial notice of them.

11 Plaintiff here has alleged a violation of 15 U.S.C. § 1692e, which prohibits a debt  
12 collector from using “any false, deceptive, or misleading representation or means in  
13 connection with the collection of any debt.” The FDCPA is a strict liability statute that  
14 “makes debt collectors liable for violations that are not knowing or intentional.”  
15 *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010). The statute  
16 provides an exception to strict liability, however, “if the debt collector shows by a  
17 preponderance of evidence that the violation was not intentional and resulted from a bona  
18 fide error notwithstanding the maintenance of procedures reasonably adapted to avoid  
19 any such error.” 15 U.S.C. § 1692k.

20 Under Washington law, neither person in a marriage is liable for the debts of the  
21 other incurred before marriage. RCW 26.16.200. Here, Teresa Jean Smith had incurred  
22 a debt *prior* to her marriage to Plaintiff. Therefore, Plaintiff did not owe any amount to  
23 Defendant. Defendant thus made a false representation when it stated that Plaintiff owed  
\$3,442.54 in unpaid medical bills. Dkt. # 4-5 at 3. Defendant also falsely stated in its  
complaint that “[d]uring all material times [Teresa Jean Smith and John Doe Smith] were  
and are married,” to justify the imposition of the debt on both Plaintiff and his wife. Dkt.  
# 4-2 at 3.

1 Defendant argues the Plaintiff's claim is baseless because Defendant "never filed  
2 suit against [Plaintiff] Persilver" (Dkt. 4 at 2) because "[t]he collection lawsuit does not  
3 name Ulysses Persilver (*id.* at 4). The Court disagrees. As noted above and summarized  
4 here, Defendant took several actions to file suit against both the debtor and Plaintiff:  
5 (1) Defendant identified Plaintiff (as the husband of Teresa Jean Smith) and named him  
6 (albeit using a placeholder of "John Doe Smith"<sup>1</sup>) as a defendant in the complaint (Dkt. #  
7 4-2 at 3); (2) Defendant provided justification to the court as to why Plaintiff should be a  
8 defendant in the collection lawsuit (namely that debtor and Plaintiff were married  
9 "[d]uring all material times" and the obligation was thus "the community and separate  
10 obligation of each" (*id.*); and (3) Defendant served both the debtor *and* her husband with  
11 the complaint (Dkt. # 4-3 at 1). The court's dismissal of Mr. Persilver as a defendant  
12 confirmed—if there was a doubt—that he was indeed a defendant in the collection  
13 lawsuit. Dkt. # 4-6 at 2. Defendant's argument that it did not file suit against Plaintiff  
14 fails.

15 The R&R states that "whether a certain debt is a community obligation is a fact-  
16 specific  
17 determination for a court to make," (Dkt. 11 at 5) citing *Harper v. Collection Bureau of*  
18 *Walla Walla, Inc.*, where the dispute was over a debt incurred while the parties were  
19 married but separated. No. C06-1605-JCC, 2007 WL 4287293, at \*1 (W.D. Wash. Dec.  
20 4, 2007). Here, there is no question of a community obligation to resolve: because  
21 Plaintiff and Teresa Jean Smith were not married at the time the debts were incurred,

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22 <sup>1</sup> Defendant contends, without citing any authority, that the use of "John Doe Smith" as a  
23 placeholder "is customary when the identity or existence of a partner in a marital community  
state is unknown," and has "a long and storied tradition dating back to English common law."  
Dkt. 4 at 4. Even assuming this to be the case, the debt collector is still bound by the FDCPA  
and, as such, is prohibited from making false representations in the collection of debt, such as  
alleging individuals owe money when they do not. Defendant could have determined whether  
the debtor was married and whether the debt incurred *after* the debtor was married through a  
review of public marriage records.

1 Washington law clearly dictates that Plaintiff is not accountable for them. *See* RCW  
2 26.16.200. Thus, *Harper* does not apply to the matter at hand.

3 Based on the facts alleged, Defendant does not meet its burden to prove that the  
4 complaint fails to state a claim upon which relief can be granted.

#### 5 IV. CONCLUSION

6 For the reasons stated above, the Court **DENIES** Defendant's Motion to Dismiss  
7 for Failure to State a Claim. The Clerk is directed to send copies of this Order to the  
8 parties and to Judge Tsuchida.

9 Dated this 10th day of August, 2020.

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12 The Honorable Richard A. Jones  
13 United States District Judge  
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